

*This Statutory Instrument has been made, in part, to correct errors in S.I. 2020/1545 and is being issued free of charge to all known recipients of that Statutory Instrument.*

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## STATUTORY INSTRUMENTS

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# 2021 No. 1164

## VALUE ADDED TAX

### The Value Added Tax (Distance Selling and Miscellaneous Amendments) Regulations 2021

		<i>at 11.15 a.m. on 25th</i>
<i>Made</i>	- - - -	<i>October 2021</i>
<i>Laid before the House of</i>		<i>at 4.00 p.m. on 25th</i>
<i>Commons</i>	- - - -	<i>October 2021</i>
<i>Coming into force</i>	- -	<i>1st December 2021</i>

The Treasury make these Regulations in exercise of the powers conferred by section 40A(7) and (9) of the Value Added Tax Act 1994(1), section 51(1)(a) of the Taxation (Cross-border Trade) Act 2018(2) and section 96(1)(a) of the Finance Act 2021(3).

In accordance with section 51(1)(a) of the Taxation (Cross-border Trade) Act 2018, the Treasury consider it appropriate to make provision in regulations 23 to 30 and 32 to 34 relating to value added tax in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU.

In accordance with section 96(1)(a) of the Finance Act 2021, the Treasury consider it appropriate in relation to the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement(4) to make provision in regulations 27, 31, 35 and 36 relating to value added tax for the purpose of, or in connection with, giving effect to Council Directive (EU) 2017/2455(5) of 5 December 2017 amending Directive 2006/112/EC(6) and Directive 2009/132/EC(7) as regards certain value added tax obligations for supplies of services and distance sales of goods.

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- (1) 1994 c. 23. Section 40A, and Schedules 9ZA and 9ZB, were inserted by Part 1 of Schedule 2 to the Taxation (Post-Transition Period) Act 2020 (c. 26). Subsections (7) to (9) of Section 40A were inserted by the Finance Act 2021 (c. 26).
  - (2) 2018 c. 22. Section 51(1)(a) permits the “appropriate Minister” to make provision relating to value added tax and under section 51(4)(b) “the appropriate Minister” means the Treasury.
  - (3) 2021 c. 26.
  - (4) See the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community 2019/C 384 1/01 at <https://www.legislation.gov.uk/eu/withdrawal-agreement/contents/adopted>.
  - (5) OJ L 348, 29.12.2017, p. 7-22. This Directive amended Council Directive (EU) 2006/112/EC to make provision in relation to distance selling. Further provision amending Council Directive (EU) 2006/112/EC has been made in connection with distance selling in Council Directive (EU) 2019/1995 of 21 November 2019 (OJ L 310, 2.12.2019, p. 1-5).
  - (6) OJ L 347, 11.12.2006, p. 1-118, as last amended by Council Directive (EU) 2021/1159 of 13 July 2021 (OJ L 250, 15.7.2021).
  - (7) OJ L 292, 10.11.2009, p. 5-30

## Citation and Commencement

1. These Regulations may be cited as the Value Added Tax (Distance Selling and Miscellaneous Amendments) Regulations 2021 and come into force on 1st December 2021.

## PART 1

### Amendments to the Value Added Tax Act 1994

#### Amendments to Schedule 9ZD to the Value Added Tax Act 1994

2. Schedule 9ZD to the Value Added Tax Act 1994(8) (distance selling of goods from Northern Ireland: special accounting scheme) is amended as follows.

3. In paragraph 2 (“scheme supply”) omit “(and references to a “third country” and “third territory” were read accordingly as including Great Britain)”.

4. In paragraph 4(3) (persons who may be registered) omit “otherwise”.

5.—(1) Paragraph 10 (liability to pay non-UK VAT to Commissioners) is amended as follows.

(2) In the heading omit “non-UK”.

(3) For sub-paragraph (3), substitute—

“(3) The gross amount of VAT on the supply is determined in accordance with sub-paragraphs (4) and (5), without any deduction of VAT pursuant to Article 168 of the VAT Directive(9).

(4) If the supply is treated as made in the United Kingdom, the amount is the amount of VAT that would be charged on the supply on the assumption for all purposes of this Act relating to the determination of—

(a) whether or not VAT is chargeable under this Act on the supply,

(b) how much VAT is chargeable under this Act on the supply, and

(c) any other matter that the Commissioners may specify by regulations,

that P is registered under this Act.

(5) If the supply is treated as made in a member State, the amount is the amount of VAT charged on the supply in accordance with the law of that member State.”.

6.—(1) Paragraph 14 (availability of records) is amended as follows.

(2) In sub-paragraph (1)—

(a) after “must” insert “keep and”;

(b) omit “any”;

(c) omit the words from “P is keeping” to the end.

(3) In sub-paragraph (3), for the words from “kept in accordance” to the end substitute “, of transactions entered into by P covered by the scheme, containing the information referred to in Article 63c(1) of the Implementing Regulation(10).”.

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(8) Schedules 9ZD to 9ZF to the Value Added Tax Act 1994 were inserted by Schedule 18 to the Finance Act 2021.

(9) The “VAT Directive” is defined in paragraph 38(1) of Schedule 9ZD to the Value Added Tax Act 1994 as meaning Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

(10) The “Implementing Regulation” is defined in paragraph 38(1) of Schedule 9ZD as meaning Council Implementing Regulation (EU) No 282/2011. (OJ L 77, 23.3.2011, p. 1-22, as last amended by Commission Implementing Regulation (EU) 2020/1112 of 20 July 2020 (OJ L 244, 29.7.2020, p. 9-10)).

7. In Part 4 (persons registered under non-UK special accounting schemes), after paragraph 21 insert—

*“Availability of records*

(1) A person (“P”) who is a participant in a non-UK special scheme must keep and make available to the Commissioners, on request, obligatory records.

(2) The records must be made available by electronic means.

(3) In sub-paragraph (1) “obligatory records” means records, of transactions entered into by P covered by the scheme, containing the information referred to in Article 63c(1) of the Implementing Regulation.”.

**Amendments to Schedule 9ZE to the Value Added Tax Act 1994**

8. Schedule 9ZE to the Value Added Tax Act 1994 (distance selling of goods imported to Northern Ireland: special accounting scheme) is amended as follows.

9. In paragraph 10 (liability to pay VAT to Commissioners) omit sub-paragraph (5).

10.—(1) Paragraph 14 (availability of records) is amended as follows.

(2) In the heading, at the end insert “: persons registered under the IOSS scheme”.

(3) In sub-paragraph (1)—

(a) after “must” insert “keep and”;

(b) omit “any”;

(c) omit the words from “P is keeping” to the end.

(4) In sub-paragraph (3), for the words from “kept in accordance” to the end substitute “, of transactions entered into by P covered by the scheme, containing the information referred to in Article 63c(2) of the Implementing Regulation(11).”.

11. In Part 4 (collection etc of UK VAT), after paragraph 30 insert—

*“Availability of records: participants in a special scheme (other than the IOSS scheme)*

(1) A person (“P”) who is a participant in a special scheme (other than the IOSS scheme) must keep and make available to the Commissioners, on request, obligatory records.

(2) The records must be made available by electronic means.

(3) In sub-paragraph (1) “obligatory records” means records, of transactions entered into by P covered by the scheme, containing the information referred to in Article 63c(2) of the Implementing Regulation.”.

12. In paragraph 34(3) (registration under this Act)—

(a) for the words before paragraph (a) substitute “A supply made by a participant in a special scheme is a “relevant supply” if—”;

(b) in paragraph (a), for “supplies” substitute “supply”;

(c) in paragraph (b), for “supplies are” substitute “supply is”.

13. After paragraph 36 insert—

*“No VAT chargeable on supplies by special scheme participants not registered for VAT*

**36A.** Where a person (“P”)—

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(11) The “Implementing Regulation” is defined in paragraph 43(1) of Schedule 9ZE as meaning Council Implementing [Regulation \(EU\) No 282/2011](#).

- (a) has a business establishment, or some other fixed establishment, in the United Kingdom or the Isle of Man in relation to a business carried on by P,
  - (b) makes a qualifying supply of goods that is treated as made in the United Kingdom,
  - (c) is a participant in a special scheme when the supply is made, and
  - (d) is not registered, or liable to be registered, under Schedule 1,
- no VAT is chargeable on the supply under this Act.”.

**14.**—(1) Paragraph 37 (no import VAT chargeable on qualifying supplies of goods) is amended as follows.

- (2) The existing text becomes sub-paragraph (1).
- (3) In the opening words of that sub-paragraph, after “Great Britain” insert “or the Isle of Man”.
- (4) In paragraph (a) of that sub-paragraph, after “that importation” insert “or removal”.
- (5) In paragraph (b) of that sub-paragraph, for “registered under the IOSS scheme” substitute “a participant in a special scheme”.
- (6) After that sub-paragraph insert—

“(2) The Commissioners may by means of a notice published by them make provision about the procedures that must be followed or the conditions that must be complied with to satisfy them that an importation or removal falls within sub-paragraph (1)(12).”.

**15.** In paragraph 38(2)(c) (time and place of supply of goods) for “registered under the IOSS scheme” substitute “a participant in a special scheme”.

**16.**—(1) Paragraph 39 (place of supply of goods: supplies facilitated by online marketplaces) is amended as follows.

- (2) Omit sub-paragraphs (1) and (2).
- (3) In sub-paragraphs (3) and (5), in each place it occurs, for “registered under the IOSS scheme” substitute “a participant in a special scheme”.

**17.** In paragraph 41(1) (refund of UK VAT), for “person registered under the IOSS scheme” substitute “participant in a special scheme”.

**18.** In paragraph 43(1) (interpretation), in the definition of “special scheme”, for paragraph (a) substitute—

- “(a) the IOSS scheme, or”.

#### **Amendments to Schedule 9ZF to the Value Added Tax Act 1994**

**19.** Schedule 9ZF to the Value Added Tax Act 1994 (modifications etc in connection with Schedules 9ZD and 9ZE) is amended as follows.

**20.** After paragraph 1 insert—

“**1A.** Section 3 (taxable persons and registration) has effect as if, after subsection (4), there were inserted—

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(12) A public notice made under paragraph 37(2) of Schedule 9ZE to the Value Added Tax Act 1994 will be made available on the [www.gov.uk](http://www.gov.uk) website as described in that link. Free of charge hard copies will be available on request from the HMRC helpline on 0300 200 3700 (+44 2920 501 2621 for outside the UK requests) or by writing to— BT VAT, HM Revenue and Customs, BX9 1WR, United Kingdom.

“(5) A person is not to be treated as being registered under this Act merely by virtue of the person being registered under the OSS scheme (within the meaning of Schedule 9ZD) or the IOSS scheme (within the meaning of Schedule 9ZE).”.

21. Omit paragraph 2.

22. In paragraph 7, in inserted sub-paragraph (1A) for “registered under” substitute “a participant in a special scheme within the meaning of”.

## PART 2

### Amendments to secondary legislation

#### Amendments to the Value Added Tax Regulations 1995

23. The Value Added Tax Regulations 1995(13) are amended as follows.

24. In regulation 133AD omit paragraph (c).

25. In regulation 133B(3), for “regulation 9” substitute “regulation 2”.

26. In regulation 145J(3), before “paragraph 38(6)” insert “or”.

#### Amendments to the Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020

27. The Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020(14) are amended as follows.

28. In regulation 6(2), for “the person who causes” to the end substitute “—

(a) in any case where a person causes goods to be placed into free circulation, that person (and not the person described in paragraph 4(3), (3A) or (4) of that Schedule); and

(b) in any other case, the person described in paragraph 4(4) of that Schedule.”.

29. In regulation 6A(2), for “the person who causes” to the end substitute “—

(a) in any case where a person causes goods to be placed into free circulation, that person (and not the person described in paragraph 4(3) or (4)(b) of that Schedule); and

(b) in any other case, the person described in paragraph 4(4)(b) of that Schedule.”.

30. In regulation 19(3)(a), after “Great Britain”, in both places it occurs, insert “or the Isle of Man”.

31. In regulation 22(2)—

(a) omit the “or” at the end of paragraph (d);

(b) at the end of paragraph (e) insert “or”;

(c) after that paragraph insert—

“(f) makes a scheme supply within the meaning of Schedule 9ZD to VATA.”.

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(13) S.I. 1995/2518; relevant amending instruments are S.I. 2020/1545 and 2021/715.

(14) S.I. 2020/1546, amended by S.I. 2021/715; there are other amending instruments, but none is relevant.

### **Miscellaneous amendments to other secondary legislation**

**32.** In article 3A(2) of the Value Added Tax (Imported Goods) Relief Order 1984<sup>(15)</sup>, for “European Union (Withdrawal) Act 2020”, in both places it occurs, substitute “European Union (Withdrawal) Act 2018<sup>(16)</sup>”.

**33.** In article 2(b) of the Value Added Tax (Treatment of Transactions) Order 1995<sup>(17)</sup>, for “European Union (Withdrawal) Act 2020” substitute “European Union (Withdrawal) Act 2018”.

**34.** In article 12(3)(b)(ii) of the Value Added Tax (Special Provisions) Order 1995<sup>(18)</sup>, for “European Union (Withdrawal) Act 2020” substitute “European Union (Withdrawal) Act 2018”.

**35.** Omit regulations 5 to 8 of the Finance Act 2021, Section 95 and Schedule 18 (Distance Selling: Northern Ireland) (Appointed Day No. 1 and Transitory Provision) Regulations 2021<sup>(19)</sup>.

## **PART 3**

### **Saving provision**

**36.** Any notice published under regulation 8 of the Finance Act 2021, Section 95 and Schedule 18 (Distance Selling: Northern Ireland) (Appointed Day No. 1 and Transitory Provision) Regulations 2021 is to be treated as if it were published under paragraph 37(2) of Schedule 9ZE to VATA 1994 (as inserted by regulation 14(6) of these Regulations).

*Rebecca Harris*

*James Morris*

Two of the Lords Commissioners of Her Majesty’s Treasury

At 11.15 a.m. on 25th October 2021

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<sup>(15)</sup> S.I. 1984/746; relevant amending instruments are S.I. 2020/1545 and 2021/715.

<sup>(16)</sup> 2018 c. 16.

<sup>(17)</sup> S.I. 1995/958; relevant amending instruments are S.I. 1999/3119 and 2020/1545.

<sup>(18)</sup> S.I. 1995/1268; relevant amending instruments are S.I. 1997/1616, 2002/1503, 2006/2187 and 2020/1545.

<sup>(19)</sup> S.I. 2021/770 (C. 41).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend certain provisions of primary and secondary legislation concerning the VAT treatment of distance selling transactions in Northern Ireland and makes other miscellaneous amendments to provisions relating to VAT.

The distance selling provisions amended by these Regulations were enacted in the Finance Act 2021 (“FA 2021”), which introduced two new VAT schemes applicable in relation to Northern Ireland by virtue of the United Kingdom’s participation in the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement (“the Protocol”). These new schemes are designed to simplify VAT accounting for the sale of goods direct to consumers by suppliers based in the EU and by suppliers who import goods into the EU for sale. The first of these schemes is the intra-Community distance selling one stop shop scheme, known as the OSS, which was enacted by FA 2021 in a new Schedule 9ZD to the Value Added Tax Act 1994 (“VATA”). The second is the distance selling of imported goods scheme, known as the import one stop shop, or IOSS, which was similarly inserted in a new Schedule 9ZE to VATA. Both of these schemes only apply in the United Kingdom in relation to goods in Northern Ireland. FA 2021 also made consequential changes to other provision in VATA concerning VAT in Northern Ireland, namely in Schedules 9ZA, 9ZB and 9ZC.

Regulations 2 to 7 amend to Schedule 9ZD to VATA. Regulations 3 and 4 amend paragraph 2 and 4(3) of that Schedule respectively to correct minor errors. Regulation 5 amends paragraph 10 of that Schedule to insert provision as to how the charge to United Kingdom VAT arises and is calculated in relation to supplies made under the OSS scheme. Regulations 6 and 7 make provision concerning records under the OSS scheme.

Regulations 8 to 18 amend Schedule 9ZE to VATA. Regulation 9 omits a provision that now forms the basis of a new paragraph 36A of that Schedule (as inserted by regulation 13). Regulations 10 and 11 make provision about records under the IOSS scheme. Regulation 12 amends paragraph 34(3) of that Schedule to correct minor errors. Regulation 13 inserts a new paragraph 36A into that Schedule, which provides for traders who fall below the VAT registration threshold in the United Kingdom and the Isle of Man (and who are not voluntarily registered for VAT) to benefit from an exemption from charging VAT on their IOSS supplies. Regulation 14 amends paragraph 37 of that Schedule so that the exemption from import VAT for qualifying goods supplied under IOSS applies to Isle of Man suppliers as it does to suppliers in Great Britain. It also makes amendments to ensure that the exemption applies to any qualifying participant of an IOSS scheme, not just those that are registered for the IOSS scheme in the United Kingdom. Finally, the amendments also introduce a power for the Commissioners to make provision by public notice as to what procedure or conditions must be met to establish a person’s entitlement to this import VAT exemption. Regulations 15 to 17 amend paragraph 38, 39 and 41 of that Schedule respectively to ensure that the exemption applies to any qualifying participant of an IOSS scheme, not just those that are registered for the IOSS scheme in the United Kingdom. Regulation 16 also removes provision relating to the time of supply of certain transactions which duplicates provision in Schedule 9ZC. That regulation and regulation 18 also correct minor errors.

Regulations 19 to 22 amend Schedule 9ZF to VATA. Regulation 20 modifies section 3 of VATA to ensure that being registered for OSS and IOSS is not to be regarded as being registered for VAT under VATA. Regulation 21 removes the modification of section 4 of VATA, which is no longer required as a result of the modification made by regulation 20. Regulation 22 amends a modification to Schedule 1 to VATA, which was inserted by FA 2021 to ensure that the inserted provision applies

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in relation to any qualifying participant of an IOSS scheme, not just those that are registered for the IOSS scheme in the United Kingdom.

Regulations 23 to 26 make miscellaneous amendments to the Value Added Tax Regulations 1995 (S.I. 1995/2518). Regulation 24 revokes a provision that is no longer required as a result of legislation made in consequence of the withdrawal of the United Kingdom from the EU. Regulations 25 and 26 rectify minor errors.

Regulations 27 to 31 make amendments to the Value Added Tax (Northern Ireland) (EU Exit) Regulations 2020 (S.I. 2020/1546). Regulations 28 and 29 make additional provision in relation to persons who are liable for the VAT charge on the removal of goods from Great Britain to Northern Ireland, and vice versa, in circumstances where goods are declared to a special customs procedure. Regulation 30 amends regulation 19 of those Regulations to clarify that the credit for VAT for goods removed to Northern Ireland also applies equally in relation to goods purchased or imported into the Isle of Man. Regulation 31 amends regulation 22 of the Regulations to include a supply made under the OSS scheme for the purposes of determining whether a person can be identified for the purposes of VAT in Northern Ireland.

Regulations 32 to 35 make miscellaneous amendments to secondary legislation. Regulations 32 to 34 rectify minor errors. Regulation 35 omits transitory provisions that are no longer required.

Regulation 36 makes a saving provision in respect of the transitory provisions omitted by regulation 35.

A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.